Mohd Suhaimi bin Roslan & Anor v Lee Wea & Ors

HIGH COURT (KUALA LUMPUR) — SUIT NO D8–22–3146 OF 1999
ABDUL WAHAB SAID AHMAD J
8 SEPTEMBER 2005

Companies and Corporations — Shares — Transfer of shares — Challenge to validity of transfer — Transfer form defective — Evidence of tampering on transfer form

Professions — Architects — Architects Act 1967 — Whether architectural firm subject to Architect Act and LAM circular — Whether person not qualified as architect can be director and shareholder in architecture firm

The plaintiffs were the directors and shareholders of Multi-Spex Architect Sdn Bhd ('MSASB'). MSASB was a registered architectural company, carrying out an architectural practice and was governed by the Architects Act 1967. Atthe same time it was also registered with the Companies Commission, Malaysia. To the plaintiffs' knowledge, they were the only directors and shareholders of MSASB. They had not appointed anyone else as directors or transferred their shares to anyone. However, on 24 November 1999, their Bank informed them that three people representing themselves as directors of MSASB had written to the Bank to change the signatories of the MSASB account in the Bank. They were the third, fourth and fifth defendants. The first defendant had registered and filed the third, fourth and fifth defendants' names with the Companies Commission without the instructions or the knowledge of the plaintiffs. The plaintiffs brought an action against the defendants seeking *inter alia* the declarations: (i) that the third, fourth and fifth defendants' appointment as directors in MSASB was null and void; (ii) that the first plaintiff and the second plaintiff were at all material times directors and shareholders of MSASB; and (iii) that the third, fourth and fifth defendants were not at any time directors or shareholders of MSASB. The issues for the court's determination were whether: (i) the plaintiffs had appointed the third, fourth and fifth defendants as directors of MSASB and transferred their shares to Lau Ing Keh, the third and the fourth defendants; (ii) the transfer of shares and appointment of directors of MSASB as alleged by the defendants really took place and made in accordance with the law.

Held, allowing plaintiffs' application and dismissing defendants' counterclaim:

(1) Nowhere in their evidence had the plaintiffs admitted that they had signed away their rights to Lau Ing Keh, the third and the fourth defendants. The defendants had only managed to contend that the plaintiffs could not complain since their signatures were already on the share transfer forms. There was ample evidence that the defendants had done all the things alleged by the plaintiffs in order to achieve their desired aim to remove the plaintiffs from MSASB (see para 50).

(2) There was no evidence of any agreement or understanding between the plaintiffs and Dato' Seow that the plaintiffs would sign away their shares over time and give way to others whom Dato Seow may identified. MSASB was an architectural company in its own right. The 70% Cygal Bhd and 30% MSASB profit distribution is evidence of that. During the conflict, Cygal Bhd had withheld payment to MSASB. The plaintiffs were not paid for their architectural services. The plaintiffs had to do something to keep MSASB from going under. They channelled some of their takings from their project with Jabatan Perumahan Negara towards their landscaping business. It was inconceivable that the plaintiffs could be faulted for trying to keep their troubled company afloat (see para 51).

(3) Dato' Seow's purported advances did not necessarily mean control. Ifat all there were advances, they had been paid for by MSASB's architectural services and the 70% profits that were paid to Dato' Seow's Cygal Bhd. There was no fiduciary duty owed by the plaintiffs to Cygal Bhd or Dato' Seow. They were separate legal entities, distinct from each other (see para 52).

(4) MSASB was registered with LAM as an architectural company and its constitution was subject to the provisions of the Architects Act and LAM Circulars. The laws were not there to be flouted. The laws were there to be adhered to. It was crystal clear that there was non-adherence as far as the purported transfer of shares and appointment of Directors were made (see para 53).

(5) Further, the first and second defendants were not totally free of any blame, just because they were 'mere company secretaries'. They had played a major role in the whole sham transfer episode, tampering with transfer documents and share certificates. The court was not concerned with whatever motive that they might have had. The fact remains that what appeared on the contemporaneous documents were deliberate attempts at deceiving the authorities to achieve the unified aim of furthering Dato' Seow's intention of unceremoniously wresting MSASB away from the plaintiff's hands and giving it a stamp of authority (see para 55).

(5) Thus in the circumstances of the case, the purported appointment of Lau Ing Keh, the third and fourth defendants as Directors of MSASB was invalid, and that there never was any transfer of shares to them. The first and second plaintiffs would therefore remained the only two shareholders and Directors of MSASB (see para 56).

[Bahasa Malaysia summary

Plaintif-plaintif adalah pengarah dan pemegang saham dalam Multi-Spex Architect Sdn Bhd ('MSASB'). MSASB adalah sebuah syarikat seni bina, yang

menjalankan amalan seni bina dan tertakluk kepada Akta Arkitek 1967. Dalam masa yang sama ianya juga berdaftar dengan Suruhanjaya Syarikat, Malaysia. Menurut pengetahuan plaintif-plaintif, hanya mereka merupakan pengarah dan pemegang saham MSASB. Mereka tidak melantik sesiapa sebagai pengarah ataupun memindahkan saham mereka kepada sesiapa pun. Walau bagaimanapun, pada 24 November 1999, bank mereka memberitahu mereka bahawa tiga orang yang mengatakan mereka adalah pengarah MSASB telah menulis surat kepada Bank untuk menukar penandatangan akaun MSASB di bank tersebut. Mereka merupakan defendan ketiga, keempat dan kelima. Defendan pertama telah mendaftarkan dan memfailkan nama defendan ketiga, keempat dan kelima dengan Suruhanjaya Syarikat tanpa arahan atau pengetahuan dari plaintif-plaintif. Plaintif memulakan tindakan terhadap defendan-defendan memohon antara lain, deklarasi: (i) bahawa pelantikan defendan ketiga, keempat dan kelima di dalam MSASB batal dan tak sah; (ii) bahawa plaintif pertama dan kedua pada setiap masa matan adalah pengarah-pengarah dan pemegang-pemegang saham MSASB; dan (iii) bahawa defendan ketiga, keempat dan kelima bukan pada mana-mana masa merupakan pengarah dan pemegang saham MSASB. Isu-isu untuk diputuskan oleh mahkamah adalah sama ada: (i) plaintif-plaintif telah melantik defendan ketiga, keempat dan kelima sebagai pengarah MSASB dan memindahkan saham mereka kepada Lau Ing Keh, defendan ketiga dan keempat; (ii) pemindahan saham-saham tersebut dan pelantikan pengarah-pengarah MSASB sebagaimana yang dikatakan oleh defendan-defendan benar-benar berlaku dan dibuat menurut undang-undang.

Diputuskan, membenarkan permohonan plaintif-plaintif dan menolak tuntutan balas defendan-defendan:

(1) Tiada di mana-mana keterangan plaintif-plaintif yang mereka mengakui bahawa mereka telah memberikan hak-hak mereka kepada Lau Ing Keh, defendan ketiga dan keempat. Defendan-defendan hanya mengatakan yang plaintif-plaintif tidak boleh merungut kerana tandatangan mereka terdapat pada borang pindah milik saham. Terdapat keterangan yang mencukupi bahawa defendan-defendan telah membuat kesemua perbuatan yang dikatakan oleh plaintif-plaintif bagi mencapai tujuan mereka untuk menyingkirkan plaintif-plaintif dari MSASB (lihat perenggan 50).

(2) Tidak terdapat keterangan mengenai sebarang perjanjian atau persefahaman di antara plaintif-plaintif dan Dato' Seow yang bahawa plaintif-plaintif akan memindahkan saham mereka dan memberikannya kepada sesiapa yang dipilih oleh Dato' Seow. MSASB adalah sebuah syarikat seni bina yang tersendiri. Pembahagian keuntungan 70% Cygal Bhd dan 30% MSASB jelas membuktikannya. Semasa konflik, Cygal Bhd telah menahan pembayaran kepada MSASB. Plaintif-plaintif telah tidak dibayar perkhidmatan seni bina mereka. Plaintif-plaintif kena berbuat sesuatu untuk menghalang

MSASB dari menjadi lingkup. Mereka telah menggunakan sebahagian dari kutipan mereka dari projek dengan Jabatan Perumahan Negara untuk perniagaan lanskap mereka. Ianya tidak munasabah bagi plaintif dipersalahkan kerana cuba untuk menyelamatkan syarikat mereka (lihat perenggan 51).

(3) Pendahuluan dari Dato' Seow yang dikatakan itu tidak semestinya bererti kawalan. Jika terdapat pendahuluan, ia telah dibayar oleh perkhidmatan seni bina MSASB dan 70% keuntungan yang dibayar kepada Cygal Bhd kepunyaan Dato' Seow. Tidak terdapat kewajipan fidusiari oleh plaintif-plaintif kepada Cygal Bhd atau Dato' Seow. Mereka adalah entiti undang-undang yang berasingan, berbeza di antara satu sama lain (lihat perenggan 52).

(4) MSASB berdaftar dengan LAM sebagai sebuah syarikat seni bina dan perlembagaannya tertakluk kepada peruntukan-peruntukan Akta Arkitek dan Pekeliling LAM. Undang-undang ini tidak boleh dilanggar. Undang-undang hendaklah dipatuhi. Ianya jelas nyata bahawa terdapat ketidakpatuhan seperti yang dikatakan berhubung dengan pemindahan saham-saham dan pelantikan pengarah-pengarah (lihat perenggan 53).

(5) Selanjutnya, defendan pertama dan kedua tidak lepas dari pertuduhan hanya kerana mereka adalah 'setiausaha syarikat' semata-mata. Mereka telah memainkan peranan yang besar dalam kepura-puraan pindah milik ini, mengubah dokumen pindah milik dan sijil saham. Mahkamah tidak menghiraukan apa motif yang mereka mungkin ada. Fakta menunjukkan terdapat cubaan yang sengaja pada dokumen tersebut untuk menipu pihak berkuasa dengan tujuan untuk mencapai niat Dato' Seow mengambil alih MSASB dari tangan plaintif (lihat perenggan 55).

(6) Maka dalam keadaan-keadaan kes ini, pelantikan Lau Ing Keh, defendan ketiga dan keempat sebagai pengarah-pengarah adalah tidak sah, dan tidak terdapat sebarang pemindahan saham-saham kepada mereka. Plaintif pertama dan kedua dengan itu tetap menjadi pemegang saham dan pengarah MSASB (lihat perenggan 56).]

Notes

For cases on architects generally, see 10 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 1505–1530.

For cases on transfer of shares, see 3(1) *Mallal's Digest* (4th Ed, 2003 Reissue) paras 795–822.

Legislation referred to

Architects Act 1967
Evidence Act 1950 s 114(g)

A Halim (A Halim, Hanafi & Zulkarnain) for the first and second plaintiffs.
SY Ng (YM Ng with her) (Raja, Darryl & Loh) for the first to the fifth defendants.

Abdul Wahab Said Ahmad J:

[1] The plaintiff in this case brought this action against the defendants to obtain the following declarations and orders:

(i) That the third, fourth and fifth defendants' appointment as directors in Multi-Spex Architect Sdn Bhd (MSASB) is null and void.

(ii) That the first plaintiff and the second plaintiff are at all material times directors and shareholders of MSASB.

(iii) That the third, fourth and fifth defendants were not at any time directors or shareholders of MSASB.

(iv) All forms, instruments or any documents on the structure of MSASB registered by the first, second and third defendants, their servants or agents, in the name of the third, fourth and fifth defendants are null and void.

(v) The first and second defendants must cancel and rectify all minutes, transfer of shares and any documents that were prepared not under the instructions or in the interest of the first and second plaintiffs.

(vi) The defendants must return to the plaintiffs all forms, minute books, share transfer book, account books and any documents pertaining to and belonging to MSASB in their possession.

(vii) General damages and costs.

[2] The third, fourth and fifth defendants filed a counterclaim for the following orders and declarations:

(i) Their appointment as directors of MSASB is valid,

(ii) That the shareholders of MSASB are Lau Ing Keh — 35000 units, the third defendant — 7500 units and the fourth defendant — 750 units.

[3] Before the trial of the action, the court had granted an injunction to restrain the defendants from interfering with the affairs of MSASB.

[4] The issues for the court's determination are whether:

(1) The plaintiffs had appointed the third, fourth and fifth defendants as directors of MSASB and transferred their shares to Lau Ing Keh, the third and the fourth defendants.

(2) Whether the transfer of shares and appointment of directors of MSASB as alleged by the defendants really took place and made in accordance with the law.

[5] MSASB is a registered architectural company, carrying out an architectural practice and is governed by the Architects Act 1967. At the same time it is also registered with the Companies Commission, Malaysia.

[6] To The plaintiffs' knowledge, they are the only directors and shareholders of MSASB. They have not appointed anyone else as directors or transferred their shares to anyone, Including Lau Ing Keh, the third, fourth and fifth defendants.

[7] However, on 24 November 1999, their Bank, Public Bank Bhd, informed them that three people representing themselves as directors of MSASB had written to the Bank to change the signatories of the MSASB account in the Bank. They were the third, fourth and fifth defendants. The first defendant had registered and filed the third, fourth and fifth defendants' names with the Companies Commission without the instructions or the knowledge of the plaintiffs.

[8] The plaintiffs only knew about the third, fourth and fifth defendants' appointment as directors of MSASB and the transfer of their shares to Lau Ing Keh, the third and fourth defendants after the Companies Commission called them to identify the documents and files of MSASB confiscated from the first defendant. The second defendant is MSASB's secretary. The plaintiffs said that the second defendant, who at all material times is in charge of handling the affairs of MSASB should have knowledge of the first, third, fourth and fifth defendant's actions.

[9] The period during which the third, fourth and fifth defendants were appointed as directors of MSASB and the transfer of MSASB shares was after 30 June 1999 or around mid July 1999 until November 1999. That was after Tuan Syed Zain Al-Kudcy's ('DW2') resignation as director of MSASB and the transfer of his shares in MSASB to The plaintiffs were finalised.

[10] It is an agreed fact that before DW2 resigned as a director of MSASB on 30 June 1999 and transferred 15000 units of shares to the plaintiffs on 30June 1999 and effected on 7 July 1999, the first and second plaintiffs each held 17500 shares. Therefore on 30 June 1999, the only directors and shareholders of MSASB were the first and second plaintiffs.

[11] The plaintiffs said that it is undisputed that DW2 had resigned as a director of MSASB and transferred his shares to the first and second plaintiffs. Before the transfer the composition of MSASB was:

(i) DW2 — 15000 share units

(ii) First Plaintiff — 17500 share units

(iii) Second Plaintiff — 17500 share units

[12] Upon the transfer by DW2 they each received 7500 units. Therefore as at 30 June 1999, the first and second pPlaintiffs each held 25000 shares in MSASB.

[13] Evidence of the above is found in ID–9 and ID–41, at p 41. The plaintiffs said that these documents were not marked as exhibits because the original could not be produced since they were last kept by the first defendant. The plaintiffs said that the defendants tampered with ID–9 in that they added the part about the appointment of the third, fourth and fifth defendants as Directors of MSASB. The defendants had relied on ID–9 to show that the appointment was within the knowledge of the first and second plaintiffs. Other documents that the defendants relied on are ID–40 and D–37.

[14] The third, fourth and fifth defendants tried to show that their appointment as Directors originated from ID–40 where it was stated that majority shareholder of MSASB as at 15 June 1999 was purportedly Lau Ing Keh. The plaintiffs said that this is not true. This is because the signature in D–10, ID–32 and D–37 are not the signatures of Lau Ing Keh. The signatures of the share transferee in D–10 and ID–32 were the signatures of Mohd Reza bin Ismail. This is confirmed through exh P–34. ID–40 is a concerted document as it does not contain the signatures of Lau Ing Keh or PW4. The share certificate numbers that were purportedly allotted to Lau Ing Ken's were doubtful as they were not in sequence.

[15] Evidence of witnesses also shows that Lau Ing Keh was not a shareholder of MSASB as at 15 June 1999. PW4 Mohd Reza bin Ismail admitted that the signatures in D–10 and ID–32 were his. DW3 also admitted that the signatures in Exhibits D-10 and ID-32 were PW4's, but he had deliberately put Lau Ing Keh's name beneath the signature even though he knew it was wrong, being an act aimed at deceiving the authorities like the Companies Commission, Malaysia. The first and second plaintiffs also denied their signatures in D–10, ID–11, ID–32 and D–33 transferring their shares to Lau Ing Keh, the third and fourth defendants. This, according to The plaintiffs, is supported by the evidence of PW4, who said that when he signed D–10 and ID–32, the forms were empty. There were no signatures of transferees of shares. The third defendant witnessed the signature. PW3 said that D–10, ID–32, ID–11 and D33 were sent to the Chemistry Department for analysis. Just as IDP–57 that PW3 read in court, three of the said documents were found to be of 'different authorship'. PW5 in his evidence said that according to the records of the Architects Board of Malaysia, the Directors and shareholders of MSASB only consist of the first and second plaintiff.

[16] The plaintiff submitted that it is inconceivable that there is transfer of the said shares to Lau Ing Keh since the document was signed by PW4. If Lau Ing Keh did not sign the document, how then could Lau Ing Keh receive the MSASB shares and in what capacity he appoints the third, fourth and fifth defendants? The plaintiffs said that the other exhibits could also not be of any assistance to the defendants because a paragraph in ID–9 was added in unilaterally. D–39 was made by DW2 alone as in the case of D–37. This is clearly against art 90 of the Memorandum and Articles of Association of

MSASB. All the documents were made without the knowledge or consent of the plaintiffs.

[17] In his evidence PW2 explained that the numbers in the share certificates that were supposed to belong to Lau Ing Keh, the third and the fourth defendants were serially inconsistent. The plaintiff's learned counsel submitted that the first and second defendants' conspiracy of transferring the MSASB shares to Lau Ing Keh, the third and the fourth defendants and the subsequent registration of the third, fourth and fifth defendants has left the first and second plaintiffs without shares. Even if they are still Directors, they would not have any powers and rights against MSASB.

[18] The above purpose was achieved by transferring the first and second plaintiff's shares amounting to 35000 units to Lau Ing Keh and made him the majority shareholder in MSASB. A purported shareholders resolution signed by the second defendant and Lau Ing Keh supposedly appointing the third, fourth and fifth defendants as Directors of MSASB effective from 1 November 1999, followed. A letter purportedly appointing the third, fourth and fifth defendants as Directors of MSASB, was signed by the second defendant alone. Again, the second defendant alone signed a purported Directors' resolution appointing the third, fourth and fifth defendants as Directors of MSASB. Notwithstanding that, a paragraph was added to ID–9, purportedly appointing the third, fourth and fifth defendants as Directors of MSASB effective from 1 November 1999, The plaintiff also said that the first and second defendants also fabricated the notice and minutes of meeting and the Directors' Resolution that were signed by the third, fourth and fifth defendants.

[19] However, according to The plaintiffs' learned counsel, even after doing all of the above, the defendants had neglected the fact that the MSASB is not only registered with the Companies Commission of Malaysia, but is also an Architectural Company registered with Lembaga Arkitek Malaysia ('LAM'). It is subject to the Architects Act and all the regulations under it.

[20] The plaintiffs said that according to the Memorandum and Articles of Association of MSASB, where the management and running of the Company is concerned, the Architects Act is applicable. Therefore there is no truth in the defendants' and DW2 and DW3's assertion that the transfer of shares of MSASB and appointment of Directors could be done without having regard to the rules and regulations, so long as there is no architectural practice during that period. This is because DW2 had signed the Statutory Declaration in Form 1 of the Architects Act, to comply with all the rules and regulations under the Architects Act. There was a deliberate non-compliance when DW2 signed D–37, D–39 and ID–40.

[21] The plaintiff's counsel stressed that according to Pekeliling Am No 1/1996 of LAM, the composition of directors and majority shareholder of an Architectural Company must at all times consist of qualified and registered Architects like the first and second plaintiffs.

[22] The plaintiffs outlined the defendants' actions that are said to be in contravention of the Companies Act and the Architects Act. Firstly, the defendants had used a letter and resolution signed by one Director only, namely DW2. The defendants had sought to give legal effect to the documents by registering the third, fourth and fifth defendants' name, according to a resolution with the Companies' Commission of Malaysia. Secondly, the defendants transferred MSASB shares to Lau Ing Keh, who does not have the qualifications under the Architects Act, because he is not an architect or professional who is allowed to hold shares in an architectural company like MSASB. It is done by using PW4's signature on an empty Form 32A. Thirdly, the third, fourth and fifth defendants were made Directors of MSASB simultaneously, making the first and second plaintiffs minority Directors. Lastly DW3 had admitted and was aware that Lau Ing Keh's name was put under PW4's signature and yet still wanted to proceed in giving legal effect to the document.

[23] In addition to the above, it was said that the signatures of the first and second plaintiffs on D–10, ID–11, ID–32 and D–33 were forged. PW3 said this in his evidence, based on IDP–57. The defendants' assertion that MSASB belonged to DW3 was not proven. The first and second plaintiffs, DW2 and DW3 all admitted that there were no written agreements and understanding on who owns MSASB. There were also no credible witnesses from the defendants who could shed some light on this matter. The plaintiff's learned counsel said that in any event, whatever reason that DW3 might have given on the ownership of MSASB, the fact remains that the defendants had tried to wrest control of MSASB from The plaintiffs in a manner that contravenes the Companies Act, by tampering with documents and signatures.

[24] The plaintiff's learned counsel said that the defendants' contention, through DW2 and DW3, that DW3 had advanced a lot of money in incorporating MSASB is baseless and unproven. Exhibit P–12 issued by Cygal Bhd, the company owned by DW3 shows that all the incorporation expenses of MSASB were paid for by MSASB through architectural services given to Cygal Bhd and the Cygal Group. The plaintiffs said that they have paid for all the monies advanced to them. Therefore, The plaintiff's learned counsel submitted that the defendants had failed to prove that DW3 is the owner of MSASB and that The plaintiffs are mere nominees.

[25] The first defendant was not called as a witness. This according to the plaintiffs, is regardless of the fact that he was the company secretary who had at all times held MSASB's documents until they were confiscated by the Companies' Commission of Malaysia, and was purportedly a witness to the first and second plaintiff's signature on D–10, ID–11, ID–32 and D–33. Hewas also said to be the one who have prepared all the documents, Notice and Minutes of Meetings of MSASB that had become issues in this action. An individual by the name of Sunny Wong Choong Sang who was purportedly

a witness to The plaintiffs' signature on 0–10,10–11,10–32 and 0–33 was also not called to give evidence. Because of this, the plaintiffs invoked s 114(g) against the defendants, that it is presumed that there was no transfer of MSASB's shares to Lau Ing Keh, the third and the fourth defendants.

[26] The plaintiff's learned counsel had gathered from the evidence of DW1 and DW3 that Cygal Bhd and the Cygal Group was at the particular time facing financial difficulties, until they were listed as PN4 in the Kuala Lumpur Stock Exchange. Therefore the plaintiffs deduced that the defendants' motive for the conspiracy is so that they could acquire all the assets of MSASB, including the RM1.9 million fees obtained from the Jabatan Perumahan Negara on or about October 1999. At the same time they are denying MSASB's right to claim the architects' fee given to Cygal Bhd and the Cygal Group.

[27] This conspiracy motive, according to the plaintiff, could also be found in PW4's evidence. He said that he had signed an empty Form 32A at the end of 1999 or early 2000. DW3 had admitted that he had backdated the document. PW4 had often met Lau Ing Ken but he was never asked to sign the Form in advance. Therefore, the plaintiffs deduced that the defendants' contention that the plaintiffs signed the empty Form 32A in advance was a lie and that there is disparity in the defendants' evidence that they are not subject to the provisions of the Architects Act.

[28] The defendants' act of inviting PW4 to become a shareholder of MSASB was taken by the plaintiffs as proof that the defendants had knowledge of the composition of shareholders and directors in an architectural company as required by the Architects Act. At the same time, the defendants and DW3 knew very well that Lau Ing Keh was not an architect or engineer or professional to be permitted to hold shares in MSASB by the Malaysian Architects Board.

[29] Another proof, which the plaintiff said showed the existence of this motive is that the date of exh D–48 is 15 November 1999, whereas the additional paragraph about the purported appointment of the third, fourth and fifth defendants as Directors of MSASB in ID–9 stated as if Form 48 of the Companies Act was completed on or before 30 June 1999. The plaintiffs also referred to the evidence of DW2 and DW3 where they admitted that there is an architect-client relationship between MSASB and Cygal Bhd and the Cygal Group. This signifies the obligation to pay service fees to MSASB.

[30] The plaintiff's learned counsel submitted that the defendants' allegation that there is a breach of fiduciary duty is baseless since it is not an issue in this action. The plaintiffs said that as legitimate shareholders and Directors of MSASB they have the discretion to conduct the business of MSASB without having to refer to any third party.

[31] The defendants in their submissions traced the history of MSASB from its humble origins as a shelf company known as Jati Elit Development

Sdn Bhd. Its name was then changed to Multi-spex Architects Sdn Bhd. Just as the company was to begin operations, the nominal shareholding of MSASB was transferred from Halimah bte Sidoal (one share) to the first plaintiff and Tuan Syed Zain Al Kudcy ('Syed Zain'). The first plaintiff and Syed Zain were subsequently allotted shares and they held 35,000 and 15,000 shares respectively sometime in February 1997.

[32] Upon the entry of the second plaintiff, the first plaintiff's shares were split, the first plaintiff therefore held 17,500 shares, the second plaintiff 17,500 shares and Syed Zain 15,000 shares. The defendants contended that the first and second defendants at the inception of the company agreed to transfer out their 17,500 shares respectively to any party whom Dato' Seow Yong Chin (DW3) would nominate and the plaintiffs had executed share transfer forms to that effect.

[33] Due to a purported dispute between Dato' Seow and the plaintiffs, the defendants said that the shares were to be transferred out to one Mohd Riza, an architect who would take over the running of the company. Since Mohd Riza later did not want to participate in the company, the same transfer forms were used to effect the transfer of The plaintiff's 35,000 shares to Lau Ing Keh as an interim measure pending Dato' Seow identifying new directors to manage the company.

[34] The defendants contended that since no new architects were identified in November 1999 the first and second plaintiffs had to transfer out their 7,500 shares to the third and the fourth defendants in accordance with Dato' Seow's wishes. The defendants alleged that the first and second plaintiffs had done so willingly. The third, fourth and fifth defendants, employees of Dato' Seow's other companies, were appointed as directors, in order that Dato' Seow could maintain control over the company.

[35] The 35,000 shares was said to have been transferred out from the first and second plaintiffs to Lau Ing Keh and registered in his name only in November 1999. The 15,000 shares transferred out from the first and second plaintiffs to the third and fourth defendants were also registered in their names in November 1999.

[36] According to the defendants, each of the plaintiffs were required to transfer out their 17,500 shares to Lau Ing Ken, 7,500 each to the third and fourth defendants. The defendants contended that the third, fourth and fifth defendants were duly appointed as Directors of MSASB by the shareholders and Directors' Resolution erf MSASB even though Lau Ing Keh had not been issued his certificate as a shareholder. The defendants alleged that the purported new Directors of the MSASB later discovered the opening of the Public Bank Account Of MSASB by the plaintiffs for which substantial monies were deposited and withdrawn without the consent of the MSASB, in breach of their fiduciary duties. MSASB's minutes do not reveal the opening

of this account and the resolution was said to have been prepared without the knowledge of the Company Secretaries. The defendants contended that the plaintiffs as appointed Directors owe MSASB a duty to account for the monies received and pay all expenses and liabilities including statutory liabilities and advances given to the company.

[37] The defendants sakl that tine first and second defendants, being Company Secretaries, have no interest in MSASB. They did no more than render their company secretarial services in the ordinary course of their employment. They also provide company secretarial services to companies within the Cygal Group. The defendants denied that the first and second defendants are involved in any conspiracy. They merely prepared the relevant documents required from time to time relating to the transfer of shares and the appointment of Directors of the Company.

[38] The defendants contended that the plaintiffs have not made out their case. The plaintiffs were said to have failed to provide explanations as to the manner in which MSASB was set up and managed and the circumstances relating to the financing of the operations of the company. The defendants alleged that the plaintiffs were only running the day to day operations of MSASB and was never in control of it. Steve Leyton was the expert Architect appointed to do the design work for the company's projects with the Cygal group of companies.

[39] The defendants dismissed the plaintiffs' allegation that there was a forgery. The defendants claimed that it was an accepted practice that the other shareholder of MSASB had agreed to sign away their interests in the Company whenever they acquired any shares, through the execution of blank transfer forms. The defendants contended that Dato' Seow had not intended to deceive the Registrar of Companies when Lau Ing Keh's name was entered as a shareholder. The defendants said that since the plaintiffs had executed the blank transfer forms, they are in no position to complain. According to the defendants the issue of forgery does not arise as the transfer of documents correctly reflects the plaintiffs' intention for the shares to be transferred to Lau Ing Keh. The defendants claim that the plaintiffs in the original arrangement with Dato' Seow had agreed not to have any interest in the shares in MSASB and had signed out the share transfer forms and kept the share certificates with the Company Secretary.

[40] The defendants alleged that the plaintiffs' evidence were contradictory. They claimed that since the first plaintiff was an employee of Cygal Bhd before he joined the company, he could not have set up his own architectural practice only to secure work from the Cygal group of companies. It appeared to the defendants that Dato' Seow's and Syed Zain's version that MSASB was set up with a view towards doing projects for Cygal Bhd at a favourable price beneficial to Cygal Bhd is more consistent. The defendants said that MSASB

was one of Dato' Seow's shelf companies and was operated by his company secretarial force. The plaintiffs were said to not have disclosed the details of the advances made by Dato' Seow and that to date they have not accounted to Dato' Seow for the advances made.

[41] According to the defendants there were never any substantial projects by MSASB other than projects for the Cygal Group of Companies. The defendants did not agree with the plaintiffs reasoning that the Public Bank Account was opened for non-Cygal projects. The defendants claimed that the Public Bank Account was opened to receive monies from Jabatan Perumahan Negara without Syed Zain's knowledge who was a signatory to the Maybank Account. That was why it was covertly opened and the purported resolution not recorded by MSASB.

[42] Instead of opening a separate account a more sensible approach according to the defendants would be issue bills to Cygal Bhd and complete an account of advances owed to Dato' Seow accordingly. This is because MSASB could not have seen substantial profits for the two years of the dispute. Cygal projects itself would take years to complete.

[43] The defendants brushed aside the allegation of inconsistencies in the documents by saying that they are no more than mistakes, which could be corrected by the company secretarial staff. As for the plaintiff's allegations that the shares in the company could not be transferred to Lau or the third and fourth defendants as it contravened the provisions of the Architects Act, the defendants said that they are not caught by the Act as appointing Lau Ing Keh or the third and fourth defendants are only an interim measure, until Dato' Seow could procure new architects into MSASB. The defendants gave the same reasoning for the prohibition against having non architects as shareholders and the need to comply with the regulations set out by Lembaga Arkitek Malaysia.

[44] As for the evidence of the investigating officer of the registrar of companies, En Azmil, the defendants said that it was based largely upon the manner in which The plaintiffs had lodged the complaint. Since investigations are still pending, the defendants said that the evidence on the handwriting in the transfer forms is inconclusive. The defendants reiterated again that the company secretarial staff had used the same forms to effect the transfer because The plaintiffs had signed away their interests based on the arrangement they had with Dato' Seow. Furthermore the defendants said that there was no reason for Dato' Seow to wrestle MSASB from The plaintiffs since MSASB was making losses. The plaintiffs could not also have concluded that they were tricked by Dato' Seow or Syed Zain in relation to the projects that they were doing for the Cygal Group of Companies. This is owing to the fact that they were aware that the projects were long term and that the company was not the only one suffering a severe economic crisis around 1999–2000.

[45] The defendants, through Dato' Seow, contended that MSASB was never beneficially owned by the plaintiffs. There is no evidence before the court that The plaintiffs had management, control and ownership of MSASB. The defendants said that the plaintiffs had over relied on their status as registered architects in claiming their entitlement to the shares.

[46] The defendants said that MSASB was set up to provide supporting architectural services to Dato' Scow's Cygal Bhd. He was said to have single-handedly financed the operations of MSASB. MSASB and Cygal Bhd was also said to have shared the same office. The defendants further contended that MSASB depended on Cygal Bhd for its business. Projects sourced by the plaintiffs themselves in the 2 1/2 years prior to the dispute were said to be insignificant being low fee generating or not paid at all.

[47] The defendants said that the dispute arose because the defendants discovered that the plaintiffs had set up a separate architectural practice, using the equipment and manpower financed by Dato' Seow. Because of the conflict, the defendants contended that the plaintiffs had agreed to eventually relinquish their shareholding as well as their directorship in MSASB over a period of time and that new architects would be sourced and identified to take over the position of the plaintiffs who would thereafter cease from the company entirely.

[48] While the purported transfer of shares was taking place the plaintiffs moved MSASB to No 5–1, Jalan 15/48A, Sentul Raya Boulevard, off Jalan Sentul, Selangor Darul Ehsan. Even though MSASB had an account with Malayan Banking Bhd The plaintiffs opened an account with Public Bank Bhd. Substantial payments of more than RM1 million was said to have been paid into the new bank account. The money was in respect of a project known as 'cadangan membina 3160 unit rumah di bawah program perumahan rakyat 10 blok apartmen 16–18 tingkat di atas lot No 34776, Kampung Batu Muda, Mukim Batu, Kuala Lumput untuk Jabatan Perumahan Negara.

[49] The plaintiffs were said to have misappropriated the monies into the Public Bank Account. Instead of paying out the profits as dividends The plaintiffs were said to have used a sum of RM850,000 for their landscaping business. Further, the plaintiffs were said to have removed from the offices of MSASB all its equipment, furniture, books and records. Therefore the plaintiffs were said to have breached their fiduciary duties to MSASB and to its shareholders.

[50] Having gone through the mass of evidence in the form of witnesses' testimony and exhibits, bolstered by the able submissions of the parties' learned counsels, I shall now state my findings. As to whether the plaintiffs had appointed the third, fourth and fifth defendants as directors of MSASB and transferred their shares to Lau Ing Keh, the third and fourth defendants,

I find that nowhere in their evidence had the plaintiffs admitted that they had signed away their rights to Lau Ing Keh, the third and the fourth defendants. The defendants had only managed to contend that the plaintiffs cannot complain since their signatures were already on the share transfer forms. Asfor the disparity in the transfer documents, the defendants reply was that since they are all under investigation by the Companies Commission of Malaysia, they are not evidence before this court. I cannot agree with this contention. I find that there is ample evidence that the defendants had done all the things alleged by The plaintiffs in order to achieve their desired aim to remove the plaintiffs from MSASB. They had put Lau Ing Ken's name under Mohd Riza's signature in D–10 and ID–11 (Form 32A). The words that purportedly appoint Lau Ing Ken, the third and fourth defendants as Directors were added on ID–9 (the purported Directors' Circular Resolution). The excuses offered by the defendants do not refute the plaintiffs' allegations. The plaintiffs denied signing any of those documents. I believe that all the evidence supports that stance. The defendants on the other hand seemed to suggest that plaintiffs signatures are on the documents to enable the plaintiff's shares to be transferred to the Data' Seow's desired nominees. It also seemed to be suggested that the wishes of Dato' Seow had to be fulfilled regardless of the fact that the plaintiff had never wished to sign away their rights.

[51] Dato' Seow owns Cygal Bhd and that that the plaintiffs used to work with Cygal Bhd. Dato' Seow financed the early operations of MSASB. That is as far as the evidence goes. However, there is no evidence of any agreement or understanding between the plaintiff's and the Dato' Seow that the plaintiffs would sign away their shares over time and give way to others whom Dato Seow had identified. MSASB is an architectural company in its own right. The 70% Cygal Bhd and 30% MSASB profit distribution is evidence of that. During the conflict, Cygal Bhd had withheld payment to MSASB. The plaintiffs were not paid for their architectural services. The plaintiffs had to do something to keep MSASB from going under. They channelled some of their takings from their project with Jabatan Perumahan Negara towards their landscaping business. It is inconceivable that The plaintiffs could be faulted for trying to keep their troubled company afloat.

[52] The defendants had repeatedly said that Cygal Bhd and MSASB are one. The fact remains that regardless of whatever amount Dato' Seow had allegedly pumped into MSASB, just after Syed Zain left MSASB, the only Directors and shareholders of MSASB were the first and the second plaintiffs. Data' Seow's purported advances does not necessarily mean control. If at all there are advances, I am satisfied that they have been paid for by MSASB's Architectural services and the 70% profits that were paid to Dato' Seow's Cygal Bhd. There is no fiduciary duty owed by the plaintiffs to Cygal Bhd or Dato' Seow. They are separate legal entities, distinct from each other.

[53] Further, on the issue of whether the transfer of shares and appointment of directors of MSASB as alleged by the defendants really took place and made in accordance with law, I find that the defendants had not been consistent on their stand that they are not subject to the provisions of the Architects Act since MSASB was not practicing, when they brought in Lau Ing Keh, the third and the fourth defendants. They reneged on this stand when they said that they had brought in Lau Ing Keh, the third and fourth defendants until they could get registered architects to be identified by Dato' Seow. They had also prepared the documents necessary under the Architects Act in order to legalise the appointment of Lau Ing Keh, the third and the fourth defendants. I deduce that this inconsistent stand is no more than an attempt at justifying the defendants' action. Whatever the reasons that the defendants had attempted to advance, the fact remains that the defendants had used unsavoury means in procuring The plaintiff's removal from the company. It is clear that the tampering of documents, misusing and forging signatures are not ways or means that would be accepted by the authorities. Whether Dato Seow wishes it or not, the laws of the country have to be followed. The defendants may say that the forgery is still under investigation. However, the fact remains that they have misused signatures on the statutory forms. The defendant's witness had admitted that Lau Ing Keh's name was put under the signature of PW4. The plaintiff's had not admitted signing the transfer forms but the defendants had said to the effect that the plaintiffs cannot complain since their signatures are already there and it is Dato' Seow's wishes to remove them and put in new Directors to keep the Cygal Bhd flag flying. MSASB is registered with the LAM as an architectural company and its constitution is subject to the provisions of the Architects Act and LAM Circulars. The laws are not there to be flouted. The laws are there to be adhered to. It is crystal clear that there is non-adherence as far as the purported transfer of shares and appointment of Directors are made.

[54] In addition to that, I do not believe that the first and second defendants are totally free of any blame, just because they are 'mere company secretaries'.

[55] They had played a major role in the whole sham transfer episode, tampering with transfer documents and share certificates. The court is not concerned with whatever motive that they may have. The fact remains that what appeared on the contemporaneous documents are deliberate attempts at deceiving the authorities to achieve the unified aim of furthering Dato' Seow's intention of unceremoniously wresting MSASB away from The plaintiff's hands and giving it a stamp of authority.

[56] I therefore hold that the purported appointment of Lau Ing Keh and the third and fourth defendants as Directors of MSASB is invalid, and that there never was any transfer of shares to them. The first and second plaintiffs would therefore remained the only Shareholders and Directors of MSASB. For all the above reasons I grant the plaintiff's application for declarations

and orders in para 24(1) of the statement of claim with general damages to be assessed by the senior assistant registrar. Consequentially I dismissed the defendants' counterclaim. Costs to the plaintiffs.

Plaintiff's application granted. Defendants' counterclaim dismissed.

Reported by Izzaty Izzuddin